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FM AMEMBASSY BONN

TO SECSTATE WASHDC 1653

INFO CINCEUR VAIHINGEN

CINCUSAREUR HEIDELBERG

C O N F I D E N T I A L SECTION 01 OF 03 BONN 05663

EUCOM AND CINCUSAREUR FOR POLADS

E.O. 11652: GDS

TAGS: ELAB, MARR, GW

SUBJECT: APPLICATION OF NEW FRG PERSONNEL REPRESENTA-
TION LAW TO CIVILIAN EMPLOYEES OF SENDING
STATE FORCES IN FRG

SUMMARY: A NEW PERSONNEL REPRESENTATION LAW WENT INTO
FORCE IN FRG ON APRIL 1, 1974. BY NOTE TO NATO SENDING
STATES DATED MARCH 19, 1974, FRG FOREIGN OFFICE STATED
THAT IN ACCORDANCE WITH ARTICLE 56(9) OF SUPPLEMENTARY
AGREEMENT TO NATO SOFA, FRG GOVERNMENT CONSIDERS THAT
NEW LAW WILL BE APPLICABLE WITH RESPECT TO CIVILIAN
LABOR EMPLOYED BY THE STATIONING FORCES, ALTHOUGH AGREE-
MENTS, IN PARTICULAR RE ARTICLE 56(9) OF SIGNATURE OF
PROTOCOL AS AMENDED WITH EFFECT FROM JANUARY 18, 1974,
REMAIN UNAFFECTED AND WILL TAKE PRECEDENCE OVER THE
PROVISIONS OF THE NEW LAW. AT APRIL 2 MEETING OF SEND-
ING STATE REPRESENTATIVES WITH FRG REPRESENTATIVES, THE
LATTER STRONGLY EMPHASIZED THE CONSIDERABLE POLITICAL
AND LABOR DIFFICULTIES THAT THE SENDING STATES COULD
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EXPECT TO EXPERIENCE IF AGREEMENT TO APPLY THE NEW LAW

SHOULD NOT BE ACHIEVED BY EARLY MAY 1974. LABOR EXPERTS OF USAREUR AND SENDING STATES PLAN TO MEET WITH FRG EXPERTS ON NEW LAW ON APRIL 9 AND 23 TO DISCUSS SCOPE OF CHANGES THAT WOULD BE OCCASIONED BY APPLICATION OF LAW, CLARIFY AMBIGUITIES AND INCONSISTENCIES, AND DISCUSS POSSIBLE INTERPRETATIONS AND MODES OF IMPLEMENTING LAW'S PROVISIONS WITH VIEW TO REACHING CONCLUSION WHETHER APPLICATION OF NEW LAW WOULD BE ACCEPTABLE FROM PERSONNEL ADMINISTRATION POINT OF VIEW. FURTHER QUESTION REQUIRING STUDY IS MANNER IN WHICH LAW COULD BE APPLIED, IF IT IS DEEMED POLITICALLY NECESSARY TO DO SO AND IS OTHERWISE ACCEPTABLE TO USAREUR, IN MANNER LEAST LIKELY TO ESTABLISH POSSIBLY TROUBLESOME PRECEDENT FOR FUTURE IMPOSITION BY FRG OF REQUIREMENTS OF FRG DOMESTIC LEGISLATION ON THE SENDING STATES, POSSIBLY OVER AND BEYOND AGREED INTERPRETATION OF REQUIREMENTS ON SENDING STATES SET OUT IN NATO SOFA AND SUPPLEMENTARY AGREEMENT AS AMENDED. END SUMMARY.

1. NEW FRG PERSONNEL REPRESENTATION LAW SUPERSEDES LAW OF AUGUST 4, 1955 REFERRED TO IN RE ARTICLE 56(9) OF SIGNATURE PROTOCOL OF SUPPLEMENTARY AGREEMENT (SA). CHANGES ITS APPLICATION WOULD EFFECT TO SITUATION PRESENTLY GOVERNED BY AMENDMENTS TO RE ARTICLE 56(9) (THAT BECAME EFFECTIVE JANUARY 18, 1974) WOULD INCLUDE: INCREASING MAXIMUM NUMBER OF MEMBERS OF WORKS COUNCILS FROM 25 TO 31, MANDATORY FULL-TIME RELEASES OF COUNCIL MEMBERS IN LOCAL COUNCILS, PAYMENT BY MANAGEMENT OF MONTHLY EXPENSE ALLOWANCES TO FULL-TIME COUNCIL MEMBERS, TIME OFF FOR TRAINING OF COUNCIL MEMBERS, AND ADDITION OF ITEMS TO LISTS OF MATTERS SUBJECT TO COOPERATION PROCEDURE AND TO COUNCIL PARTICIPATION. WE BELIEVE SCHEDULED DISCUSSIONS BY EXPERTS OF THESE CHANGES ARE LIKELY TO RESULT IN CONCLUSION THAT WITH CERTAIN AGREED INTERPRETATIONS OF NEW LAW, FULL APPLICATION OF ITS PROVISIONS WOULD BE WORKABLE.

2. AT MEETING WITH SENDING STATES APRIL 2, FRG REPRESENTATIVES WARNED THAT THEY UNDERSTAND THAT CIVILIAN EMPLOYEES FEEL STRONGLY ABOUT THIS AND ARE DETERMINED
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TO ACHIEVE FULL APPLICATION OF THIS LAW (BINDING ON THEM) BY THEIR EMPLOYERS TO AVOID BECOMING THIRD-CLASS CITIZENS (A REFERENCE TO FACT THAT UP TO PRESENT, THEY HAVE CONSIDERED SELF SECOND-CLASS CITIZENS AS THE ONLY EMPLOYEES IN FRG NOT ENJOYING FULL APPLICATION OF 1955 LAW). FRG REPRESENTATIVES INDICATED POSSIBILITY THAT LABOR REPRESENTATIVES COULD TAKE MATTER TO LABOR COURTS WHOSE POSSIBLE JUDGMENT THAT LAW FULLY APPLIED

TO SENDING STATES AS EMPLOYERS WOULD CREATE DIFFICULT SITUATION. IT WAS HARD TO IMAGINE THAT COURTS WOULD FIND THAT SENDING STATES COULD CONTINUE, AS ONLY EMPLOYERS IN FRG, TO BE BOUND ONLY BY PARTS OF THE NOW SUPERSEDED 1955 PERSONNEL REPRESENTATION LAW.

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3. FONOFF LEGAL REPS POINTED OUT THAT IN THEIR VIEW ARTICLE 56(1) AND (9) OF SA PROVIDES FOR THE APPLICATION OF GERMAN LABOR LAW GENERALLY, AND PERSONNEL REPRESENTATION LAW IN PARTICULAR, TO EMPLOYMENT OF CIVILIAN LABOR, UNLESS OTHERWISE PROVIDED IN SIGNATURE PROTOCOL. THEY INTERPRET THIS AS ALLOWING APPLICATION OF THESE LAWS AS THEY ARE CHANGED, AND NOT AS RIGIDLY LIMITED TO SUCH LAWS IN FORCE AT THE TIME THE SA CAME INTO FORCE. SENDING STATES REPS POINTED OUT THIS POSSIBLE INTERPRETATION DID NOT APPEAR BORNE OUT BY FACT THAT COMPREHENSIVE RE ARTICLE 56(9) OF SIGNATURE PROTOCOL IN ITS ORIGINAL AND RECENTLY AMENDED FORM MAKES SPECIFIC

REFERENCE TO 1955 LAW. FRG REPS POINTED OUT THAT IN VIEW OF RECENT AMENDMENT TO RE ARTICLE 56(9), THEY HAD TAKEN LINE IN REPLY TO PARLIAMENTARY QUESTION THAT FRG COULD NOT EXPECT SENDING STATES TO BE PREPARED TO RENEGOTIATE RE ARTICLE 56(9) ONLY MONTHS AFTER IT CAME INTO FORCE. THEY EMPHASIZED THAT IF SENDING STATES SHOULD CONSIDER RENEGOTIATION OF THIS ARTICLE NECESSARY
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TO APPLICATION OF NEW LAW, FEDERAL GOVERNMENT WOULD BE CONSTRAINED BY REASON OF PARLIAMENTARY RESOLUTION BINDING ON IT TO MAKE EXTENSIVE EFFORTS TO HAVE SENDING STATES ACCEPT FULL APPLICATION OF THE PROVISIONS ON CODETERMINATION OF 1974 LAW WHICH THE AMENDED RE ARTICLE 56(9) WOULD PRECLUDE FROM APPLYING TO SENDING STATES. MOREOVER, AMENDMENT OF RE ARTICLE 56(9) HAD TAKEN FROM 1966 TO 1974 TO BE AGREED AND BROUGHT INTO FORCE, AND ANY DELAY OF THIS ORDER WOULD BE ABSOLUTELY UNREALISTIC GIVEN THE CURRENT PRESSURES ON THE FRG LABOR SCENE GENERALLY AND CONCERNING THIS PARTICULAR ISSUE.

4. SPECIFIC URGENCY IS OCCASIONED BY IMPENDING ELECTIONS OF WORKS COUNCIL MEMBERSHIP. THESE ELECTIONS HAVE ALREADY BEEN SCHEDULED BY AGREEMENT BETWEEN LABOR, FRG AUTHORITIES AND SENDING STATES FOR AS LATE AS POSSIBLE BEFORE SUMMER VACATION PERIOD, BUT WOULD NEED TO BE HELD RE EMPLOYEES OF ALL SENDING STATES BY JUNE 18, 1974. PREPARATION TIME FOR SUCH ELECTIONS PROVIDED BY CURRENTLY APPLICABLE REGULATIONS IS SIX WEEKS, MEANING THAT BY FIRST WEEK OF MAY 1974, DECISION WOULD HAVE TO BE MADE BY SENDING STATES WHETHER WORKS COUNCIL MEMBERSHIP TO BE ELECTED WOULD BE FOR UP TO 31 POSITIONS UNDER NEW LAW OR ONLY UP TO 25 POSITIONS UNDER OLD LAW. FRG REPS EXPLAINED THAT WHILE APPLICATION OF NEW LAW IN DAY-TO-DAY MATTERS COULD BE POSTPONED ON BASIS OF EXPLANATION TO LABOR THAT SENDING STATES MUST HAVE OPPORTUNITY TO STUDY COMPLEX LAW ONLY RECENTLY BROUGHT TO THEIR ATTENTION, THE CONSTITUTIONAL QUESTION OF THE NUMBER OF REPRESENTATIVES ON WORK COUNCILS NEEDS A DECISION BY EARLY MAY AND COULD NOT BE POSTPONED OR FINESSED.

5. SENDING STATES REPS, NOTABLY US AND UK, EXPRESSED CONSIDERABLE DISSATISFACTION AT BEING PUT INTO SERIOUS TIME BIND THROUGH COMING INTO FORCE OF LAW (CONSTANTLY CHANGED DURING PARLIAMENTARY PROCEDURES) TO BE APPLIED ONLY DAYS AFTER FRG GAVE SENDING STATES FORMAL NOTICE OF IT AND FEDERAL GOVERNMENT VIEW THAT IT SHOULD BE APPLIED. SENDING STATES WERE ESSENTIALLY BEING TOLD BY FEDERAL GOVERNMENT THAT THEY HAVE NO REALISTIC ALTERNATIVE BUT TO ACQUIESCE IN THE FRG VIEW THAT LAW

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MUST EITHER BE APPLIED OR ITS PROVISIONS BE IMPLEMENTED. US AND UK REPS STATED THAT A TREATY INTERPRETATION PROBLEM WAS INVOLVED, AND IF SENDING STATES DISAGREED WITH FRG INTERPRETATION THAT ARTICLE 56(1) AND (9) OF SA COMPELLED APPLICATION OF THE NEW LAW, A QUESTION OF PRINCIPLE WAS INVOLVED WITH IMPLICATIONS GOING BEYOND THIS LABOR REPRESENTATION PROBLEM AND POSSIBLY BEYOND THESE AGREEMENTS, THE QUESTION BEING WHETHER STATES SHOULD ACQUIESCE IN SUBMITTING TO THE REQUIREMENTS OF FRG DOMESTIC LAW OVER AND ABOVE THE REQUIREMENTS IMPOSED ON THEM BY TREATY. THE FRG REPS URGED THAT THE SENDING STATES RECOGNIZE THE REALITIES OF THE SITUATION AND FOCUS ON THE PRACTICAL PROBLEMS. MEETINGS OF THE LABOR EXPERTS WERE SCHEDULED FOR APRIL 9 AND 23, IN THE EXPECTATION THAT BY LATE APRIL IT WOULD AT THE VERY LEAST BE CLEAR FROM A PRACTICAL ADMINISTRATIVE STANDPOINT WHETHER THE WORKS COUNCIL ELECTIONS WOULD FILL 31 OR 25 POSITIONS.

6. UK REPS AND EMBASSY BELIEVE THAT IF, AS IS EXPECTED, IT IS DETERMINED BY LATE APRIL THAT APPLICATION OF NEW LAW WOULD NOT POSE AN INSUPERABLE BURDEN ON SENDING

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STATES, PARTICULARLY US FORCES WITH APPROXIMATELY 70,000 CIVILIAN EMPLOYEES, A WAY COULD BE FOUND, SHORT OF FORMAL NEGOTIATION OF A NEW AGREEMENT OR AMENDMENT, TO LIMIT HARMFUL PRECEDENTIAL EFFECT OF APPLYING LAW EVEN IF OUR INTERPRETATION OF EXISTING AGREEMENTS DOES NOT AGREE WITH FRG INTERPRETATION.

7. WHILE FRG HAS INDICATED IT CAN HOLD LINE VIS-A-VIS LABOR ELEMENTS ON POSTPONEMENT OF APPLICATION OF NEW LAW WHILE SENDING STATES HAVE REASONABLE TIME TO STUDY ITS PROVISIONS, IT MAY PROVE NECESSARY TO REPLY SOONER THAN EARLY MAY TO EXPECTED LABOR QUESTIONS WHETHER STUDY OF LAW BY SENDING STATES MEANS THEY HAVE AGREED IN PRINCIPLE TO APPLICATION OF NEW LAW. IF THIS QUESTION CANNOT BE EVADED OR ANSWERED IN AFFIRMATIVE, FRG REPS BELIEVED THAT LABOR REPS MIGHT NOT BE WILLING PATIENTLY TO AWAIT OUTCOME OF DETAILED STUDIES.

8. USAREUR ON MARCH 29 INSTRUCTED ALL COMMAND PERSONNEL OFFICERS TO INFORM LABOR REPS THAT THIS COMPLEX MATTER CONFIDENTIAL

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IS UNDER STUDY AND THAT PENDING OUTCOME OF STUDY, ARMY PERSONNEL ARE TO CONTINUE TO OPERATE UNDER SYSTEM IN EFFECT AS OF END OF MARCH 1974. WHILE INSTRUCTIONS STATED THAT TO AVOID MISUNDERSTANDINGS AND DIFFICULTIES THERE WAS TO BE NO GRATUITOUS SPECULATION ON POSSIBLE STUDY RESULTS IN TERMS OF APPLICATION OR NONAPPLICATION OF NEW LAW, FRG REPS ON APRIL 2 INDICATED THAT THEY UNDERSTOOD THAT SOME LABOR REPS WERE ALREADY UPSET AT INDICATION ALLEGEDLY FROM US SOURCE THAT NEW LAW WOULD NEVER BE FOUND TO APPLY TO SENDING STATES.

9. COMMENT. WE ARE IMPRESSED WITH FRG ARGUMENT THAT DETERMINED GERMAN EMPLOYEES WILL NOT UNDERSTAND OR HAVE PATIENCE WITH NON-APPLICATION OF NEW LAW BASED ON SENDING STATE TECHNICAL DISAGREEMENT WITH FRG OVER SA INTERPRETATION. IT THUS APPEARS INEVITABLE THAT SENDING STATES MUST DEVISE SOME WAY OF APPLYING NEW LAW OR IMPLEMENTING ITS PROVISIONS IN VERY NEAR FUTURE.

10. ACTION REQUESTED. IN VIEW OF NEED BY FIRST WEEK OF MAY TO REACH DECISION AT LEAST ON NUMBERS OF ELECTIVE POSITIONS ON WORK COUNCILS, EMBASSY REQUESTS DEPT.'S VIEWS ON TREATY INTERPRETATION ASPECTS OF THIS MATTER AND, IN PARTICULAR, SUGGESTIONS ON NATURE OF AN ARRANGEMENT TO LIMIT THE HARMFUL EFFECT OF APPLYING THE NEW FRG LAW OR IMPLEMENTING ITS PROVISIONS. AVAILABLE DOCUMENTS ON THIS CASE ARE BEING POUCHED TO L/PM-MICHEL. HILLENBRAND

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